

Before the
Federal Communications Commission
Washington, D.C. 20554

Elimination of Part 23
of the Commission's Rules

IB Docket No. 05-216

2000 Biennial Regulatory Review --
Streamlining and Other Revisions of
Part 25 of the Commission's Rules
Governing the Licensing of, and
Spectrum Usage by, Satellite Network
Earth Stations and Space Stations

IB Docket No. 00-248

**NOTICE OF PROPOSED RULEMAKING
AND
SEVENTH REPORT AND ORDER**

Adopted: June 20, 2005

Released: June 24, 2005

Comment Date: 30 days after publication in the Federal Register
Reply Comment Date: 45 days after publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. In this NPRM, we propose to eliminate Part 23 of the Commission's Rules, governing International Fixed Public Radiocommunication Services (IFPRS).¹ We instead propose to regulate IFPRS services pursuant to Part 101, which includes rules applicable to other fixed services. This should simplify the Commission's rules and eliminate unnecessary burdens on IFPRS licensees.

II. BACKGROUND

2. Section 11 of the Communications Act requires that the Commission, in every even-numbered year beginning in 1998, review all regulations that apply to the operations and activities of any provider of telecommunications service.² If any regulations are no longer

¹ 47 C.F.R. Part 23. IFPRS service is defined simply as a publicly available fixed service between the United States and foreign points. 47 C.F.R. § 23.1.

² 47 U.S.C. § 161(a).

necessary in the public interest as the result of meaningful economic competition between providers of the service, Section 11 instructs the Commission to repeal or modify the regulation.³ To this end, in 2000, the Commission initiated a comprehensive review of its regulations.⁴

3. In the *2000 Biennial Review Staff Report*, the staff recommended retaining Part 23 of the Commission's Rules in its entirety pending a Commission review to determine how the few remaining licensees are using this service. Should the Commission determine that this service warrants continued regulation, the staff recommended the repeal of Part 23, with any necessary regulatory mechanisms incorporated into Part 90 or Part 101.⁵ Subsequently, in the *Notice*, the Commission observed that it had not adopted any extensive revisions to its Part 23 rules since 1973,⁶ and that there were only three IFPRS licensees at that time.⁷ Because of the small number of licensees, and the time that has passed since the Commission had last reviewed these rules, the Commission found that it was likely that some of the Part 23 requirements could be streamlined or eliminated.⁸ The Commission did not develop specific proposals for revising Part 23, but instead invited interested parties to examine Part 23 in its entirety, and to propose revising or eliminating any provision in Part 23.⁹

III. DISCUSSION

A. Elimination of Part 23

4. No one proposed revising or eliminating any provisions in Part 23 in response to the *Notice*. As a result, we find that the record before us at this time does not provide any basis for

³ 47 U.S.C. § 161(b).

⁴ Federal Communications Commission Biennial Regulatory Review 2000, *Staff Report*, CC Docket No. 00-175, 15 FCC Rcd 21084 (2000) (*2000 Biennial Review Staff Report*).

⁵ *2000 Biennial Review Staff Report*, 15 FCC Rcd at 21234. The International Bureau also questioned whether retaining Part 23 is in the public interest in its 2002 Biennial Regulatory Review Staff Report. International Bureau, Federal Communications Commission, Biennial Regulatory Review 2002, IB Docket No. 02-309, *Staff Report*, 18 FCC Rcd 4196, 4217-19 (2002). See also Federal Communications Commission, 2004 Biennial Review, *International Bureau Staff Report*, IB Docket No. 04-177, 20 FCC Rcd 343 (2005).

⁶ 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Notice of Proposed Rulemaking*, IB Docket No. 00-248, 15 FCC Rcd 25128, 25145 (para. 48) (2000) (*Notice*), citing Amendment of Part 23 of the Commission's Rules and Regulations, International Fixed Public Radiocommunications Services, *Report and Order*, Docket No. 19073, FCC 73-859, 28 Rad. Reg. 2d 313 (released Aug. 15, 1973). In this *Notice*, the Commission directed most of its attention to whether it could streamline its Part 25 procedures for certain earth station license applications.

⁷ The three IFPRS providers in operation at the time of the *Notice* were AT&T of the Virgin Islands, Inc., Broadcast Media Satellite, Inc., and Interisland Telephone Corporation. *Notice*, 15 FCC Rcd at 25145 (para. 48).

⁸ *Notice*, 15 FCC Rcd at 25145 (para. 48).

⁹ *Notice*, 15 FCC Rcd at 25145 (para. 49).

revising Part 23. Accordingly, we will not revise Part 23 at this time. This terminates our consideration of Part 23 issues in the context of IB Docket No. 00-248.

5. Instead, at this time, we initiate a new proceeding to propose eliminating Part 23 completely and applying the requirements of Part 101 to IFPRS services. Part 101 establishes procedures for many terrestrial fixed services other than IFPRS.¹⁰ The Commission created Part 101 in 1996, to replace Parts 21 and 94. Part 101 resulted in a uniform regulatory regime for several microwave services, and eliminated unnecessary regulatory burdens in Parts 21 and 94.¹¹ Eliminating Part 23 and including IFPRS services in the Part 101 framework might serve the same purpose. In addition, eliminating distinctions in regulations between international and domestic fixed public radio services would be consistent with the Commission's elimination of such distinctions in fixed satellite service regulations.¹²

6. Specifically, we propose allowing future IFPRS licensees to apply for a license pursuant to the rules in Part 1, Subpart F, "Wireless Telecommunications Services Applications and Proceedings." In addition, we invite comment on revising Section 101.147 to require any future IFPRS licensees to operate in the 3700-4200 MHz and the 10,700-11,700 MHz bands. These bands are available for fixed microwave services, and are currently shared with IFPRS.¹³ The 2110-2130 MHz and 2160-2180 MHz bands are also currently assigned to fixed microwave services and shared with IFPRS, but we propose eliminating the assignment of these bands to IFPRS in Part 101 because these bands are in the process of a transition to a reassignment to emerging technologies (ET).¹⁴ Together with these Part 101 revisions, we also propose revising the Table of Frequency Allocations to eliminate references to Part 23 in Column 6, and to revise footnote NG41 to reflect the decisions we make in this proceeding.¹⁵

7. Moreover, we seek comment on applying the requirements of Part 101, Subpart C, "Technical Standards," to IFPRS licensees to the extent that those requirements apply to the frequency bands in which they are authorized to operate. We also propose applying Part 101, Subpart I, "Common Carrier Fixed Point-to-Point Microwave Service," and Subpart E, "Miscellaneous Common Carrier Provisions," to IFPRS licensees. Finally, we request commenters to propose any revisions to Part 101 they believe may be necessary to include IFPRS among the services subject to Part 101, in the event that we decide to eliminate Part 23.

¹⁰ See 47 C.F.R. § 101.1(b) (list of services governed by Part 101).

¹¹ See Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, *Report and Order*, 11 FCC Rcd 13449 (1996).

¹² Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, CC Docket No. 95-41, 11 FCC Rcd 2429 (1996) (*DISCO I*).

¹³ See 47 C.F.R. § 101.147.

¹⁴ See 47 C.F.R. §§ 101.69 through 101.82.

¹⁵ 47 C.F.R. § 2.106.

B. Transition

8. One of the three IFPRS licensees operating in 2000, Interisland, has since stopped providing IFPRS service.¹⁶ Only AT&T of the Virgin Islands (AT&T) and Broadcast Media Satellite, Inc. (BMS) remain in operation. AT&T is licensed to transmit at 6256.54 and 6375.14 MHz, and to receive at 5974.85 and 6093.45 MHz. BMS is licensed to transmit at 6695 and 6226.89 MHz, and to receive at 6855 and 6004.5 MHz. The AT&T and BMS licenses are scheduled to expire on December 1, 2008 and December 1, 2009, respectively.¹⁷

9. Abruptly requiring AT&T and BMS to comply with Part 101 requirements might be disruptive to them and their customers. Therefore, we seek comment on whether to adopt transition provisions for these licensees. Specifically, we propose allowing these licensees to continue operating pursuant to Part 23 until the date that their licenses are scheduled to expire.¹⁸ At that time, we propose permitting AT&T and BMS to apply for a fixed point-to-point microwave license pursuant to the relevant provisions of Parts 1 and 101. If either licensee chooses to apply for such a fixed point-to-point microwave license, we propose grandfathering their use of the frequency bands on which they are currently operating. We seek comment on considering any such application under the rules applicable to microwave renewal applications, but only if the licensee applies to continue its use of the frequency bands it is licensed to use now. Finally, we propose limiting this transition to AT&T and BMS, or their successors in interest.¹⁹ In the event that any other IFPRS operator is licensed under Part 23 before this rulemaking is completed, that operator is on notice that we are considering applying Part 101 requirements to IFPRS, and should be prepared to comply with those requirements immediately, should we decide to eliminate Part 23.

¹⁶ At the time of the *Notice*, Interisland had licenses with call signs of WLV845 and WLV846. These licenses expired on February 1, 2001, and were not renewed.

¹⁷ See WBH79 (AT&T call sign); PF000001 (BMS call sign). (Copies of these licenses are available in the Commission's IBFS database.)

¹⁸ Those license expiration dates are December 1, 2008 for AT&T, and December 1, 2009 for BMS.

¹⁹ The Commission is currently considering an application to transfer control of AT&T's IFPRS license, together with several other Title III licenses and Section 214 authorizations held by AT&T, to SBC Communications, Inc. (SBC). See Commission Seeks Comment on Application for Consent to Transfer of Control filed by SBC Communications, Inc. and AT&T Corp., *Public Notice*, WC Docket No. 05-65, DA 05-656 (released Mar. 11, 2005). In the event that we grant AT&T authority to transfer its IFPRS license to SBC, SBC's provision of IFPRS service will be subject to the outcome of this rulemaking proceeding.

IV. PROCEDURAL MATTERS

10. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA)²⁰ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."²¹ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁴ No FRFA is necessary for the *Seventh Report and Order* because we have decided not to make any changes to the Commission's rules at this time.

11. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA)²⁵ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."²⁶ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁹

²⁰ The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²¹ 5 U.S.C. § 605(b).

²² 5 U.S.C. § 601(6).

²³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

²⁴ Small Business Act, 15 U.S.C. § 632.

²⁵ The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²⁶ 5 U.S.C. § 605(b).

²⁷ 5 U.S.C. § 601(6).

²⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

²⁹ Small Business Act, 15 U.S.C. § 632.

12. In this *Notice of Proposed Rulemaking*, the Commission proposes to eliminate Part 23 of the Commission's Rules, and apply the rules in Part 101 to the IFPRS licensees currently subject to Part 23. We expect that the change from Part 101 to Part 23, if adopted, would have little if any effect on the licensing procedure from IFPRS licensees' perspective. Furthermore, the Commission proposes grandfathering measures to lessen any impact that current Part 23 licensees might otherwise experience as a result of the application of Part 101 rules. Therefore, we certify that the requirements of this *Notice of Proposed Rulemaking*, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including a copy of this certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A). In addition, the *Notice of Proposed Rulemaking* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. See 5 U.S.C. § 605(b).

13. *Paperwork Reduction Act Analysis.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after the date of publication in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

14. *Ex Parte Presentations.* This is a permit-but-disclose rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Sections 1.1202, 1.1203, and 1.1206(a) of the Commission's Rules, 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

15. *Comment.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,³⁰ interested parties may file comments within 30 days after this *Notice of Proposed Rulemaking* is published in the Federal Register and reply comments within 45 days after this *Notice of Proposed Rulemaking* is published in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.³¹ Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or

³⁰ 47 C.F.R. §§ 1.415, 1.419.

³¹ See Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, GC Docket No. 97-113, 13 FCC Rcd 11322 (1998).

rulemaking number, in this case, **IB Docket No. 05-216**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

16. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). **Parties are strongly encouraged to file comments electronically using the Commission's ECFS.**

17. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

18. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

19. Documents in IB Docket No. **05-216** are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

20. *Additional Information.* For general information concerning this rulemaking proceeding, contact Steven Spaeth, International Bureau; Federal Communications Commission, Washington, DC 20554, at (202) 418-1539.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that this Seventh Report and Order in IB Docket No. 00-248 is hereby ADOPTED.

22. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final

Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

23. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, that this Notice of Proposed Rulemaking in IB Docket No. **05-216** is hereby ADOPTED.

24. IT IS FURTHER ORDERED that the Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Marlene H. Dortch". The signature is fluid and cursive, with the first name "Marlene" being the most prominent part.

Marlene H. Dortch
Secretary